IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.12.2007

CORAM:

THE HONOURABLE MR.JUSTICE P.D.DINAKARAN
AND
THE HONOURABLE MR.JUSTICE R.REGUPATHI

H.C.P.No.1444 of 2007

Usharani .. Petitioner

Vs

1. The State of Tamil Nadu
   rep. by its Secretary to Government
   Prohibition and Excise Department
   Fort St. George, Chennai-600 009.

2. The District Magistrate &
   District Collector
   Nagapattinam District
   Nagapattinam. .. Respondents

Petition filed under Article 226 of the Constitution of India for issue of Writ of Habeas Corpus as stated therein.

For Petitioner : Mr.T.Muruganantham
For Respondents : Mr.N.R.Elango
Addl. Public Prosecutor

O R D E R
(Made by P.D.DINAKARAN,J.)

The petitioner, wife of the detenu, Gnanavel, son of Shanmugam, who was incarcerated by order dated 21.9.2007 of the second respondent under Section 3(1) of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, Slum Grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14 of 1982) branding him as a Bootlegger, seeks a writ of Habeas Corpus to call for the records in connection with the order of detention passed in C.O.C.No.54/2007, to quash the same and to produce the detenu, who is now confined at Central Prison, Tiruchirappalli, before this Court and set him at liberty.

2. The order of detention dated 21.9.2007 came to be passed based on the ground case said to have taken place on 4.9.2007. On that day, the Inspector of Police, Prohibition Enforcement Wing,

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Nagapattinam, who proceeded on a prohibition raid to Vailankanni Kundumettu Street found the detenu selling illicit arrack from a 120 litres capacity lorry tube to an unknown person. On seeing the police party, the unknown person who came to drink ran away. The detenu also tried escape from the spot, but was apprehended by the police party and seized 120 litres capacity lorry tube containing 105 litres of Pondicherry arrack. A case was registered in Crime No.1752/2007 for the offence under Sections 4(1)(aaa), 4(1)(i) read with 4(1-A) of the Tamil Nadu Prohibition Act. The samples which were sent for chemical analysis report disclose that the arrack contained 6.4% mg of atropine per 100 ml.

3. The second respondent, taking note of this case as a ground case and finding that there are four adverse cases pending against the detenu in Crime Nos.184/06, 216/06 and 306/06 on the file of Thalainayar Police Station and Crime No.567/2007 on the file of Nagapattinam Prohibition Enforcement Wing for the offence under Sections 4(1)(aaa), 4(1)(aaa) read with 4(1-A) of the Tamil Nadu Prohibition Act, ordered his detention dubbing him as a Bootlegger.

4. The learned counsel for the petitioner challenges the impugned order of detention dated 21.9.2007 on the only ground of pre-determination of mind on the part of the sponsoring authority, as evident from their submission made in Crl.M.P.No.6595 of 2007 filed by the detenu seeking bail, on the file of Sessions Court, Nagapattinam, wherein, even prior to the passing of the detention order dated 21.9.2007, the Public Prosecutor appeared on behalf of the sponsoring authority submitted that the detenu was detained under Bootleggers Act and based on the said submission, the said Crl.M.P. was dismissed.

5. In the instant case, the detaining authority had not placed any material to satisfy that the detenu would indulge in the activities which would be prejudicial to the maintenance of public order and public health, if he is released on bail. In such circumstances, we are of the considered opinion that the impugned order of detention is vitiated. Accordingly, this petition is allowed. The order of detention is quashed. The detenu is directed to be set at liberty forthwith unless his presence is required in connection with any other case.

kpl

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Sd/
Asst. Registrar

/true copy/

Sub Asst.Registrar

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To

1. The Secretary to Government
   Prohibition and Excise Department
   Fort St. George, Secretariat
   Chennai-600 009.
2. The District Magistrate
   and District Collector
   Nagapattinam District
   Nagapattinam.
3. The Superintendent
   Central Prison, Tiruchirapalli.
4. The Public Prosecutor
   High Court, Madras.
5. The secretary to Government,
   Public Law & Order Department,
   fort St George, Chennai.9.

RS (co)
sg 07/01/08 H.C.P.No.1444 of 2007.

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